IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1266 OF 2004

WITH

CRIMINAL APPLNS.NOS. 1267 & 1268 OF 2004

M/s. Dee Pharma Laboratories
Ltd., etc.,etc. ... Applicants

versus

M/s. Sun Pharmaceutical
Industries Ltd., etc.,etc. ... Respondents

...

Mr. Nirajkumar Singh, for the Applicants.

Mr. S.R. Shinde, A.P.P., for the State.

Mr. Benney Joseph i/by Sanjay Udeshi & Co., for Respondent No.1.

...

CORAM : A.M.KHANWILKAR,J.

11th January 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Joseph waives notice for Respondent No. 1. Mr. Shinde, A.P.P., waives notice for Respondent No.

2 State. As short question is involved, petitions taken up for final disposal forthwith by consent.

. Essentially, two reliefs are claimed in these applications. The first relief is for dismissing the criminal complaints pending before the Court of Additional Chief Metropolitan Magistrate, Kurla, Mumbai, as filed by the Respondent No. 1 Company being hopelessly barred by limitation. The second relief is for setting aside the order passed by the trial Court issuing proclamation as against the present Applicants dated 12th November 2003. Insofar as the later relief is concerned, to that extent, these applications will succeed. There is substance in the argument that in view of the materials on record, it was inappropriate for the trial Court to take the view that the Applicants were ever absconding or concealing themselves. Inasmuch as the Applicants had applied for recall of summoning order as well as the order issuing non-bailable warrant and also for exemption from personal appearance, which, however, according to the Applicants, came to be rejected. Whereas, according to the Respondent Complainant, those

applications are still undecided. If it is so, then, by stretch of imagination, it can be said that the Applicants were concealing themselves or absconded as such. As a necessary corollary, the order issuing proclamation by the trial Court in such a situation cannot be sustained, as it cannot stand the test of judicial scrutiny.

. Insofar as the relief for dismissing the complaints being hopelessly barred by limitation is concerned, there is no substance in this argument. In the first place, issue of limitation is a mixed question of fact and law, which is required to be adjudicated upon depending on the evidence adduced by the parties. Assuming that the Applicants are justified in contending that the complaints were barred by limitation, it is well-settled that the Criminal Court has ample power to condone the delay and that can be done at any stage. Viewed in this perspective, there is no reason to entertain the prayer for dismissal of the complaints on the ground of limitation, as has been prayed in these applications. That relief will have to be rejected.

. It is, however, made clear that the issue of limitation will have to be decided by the trial Court on its own merits in accordance with law.

. Accordingly, these applications partly succeed by setting aside the order passed by the trial Court issuing proclamation as against the present Applicants.

. It is brought to my notice by the Counsel for the Respondent Complainant that the matters are pending since 1998 and have not proceeded because the Applicants have not appeared before the lower Court. The trial Court is directed to ensure that the trial of these matters is concluded as expeditiously as possible, in any case not later than six months from the date of receipt of writ of this Court. If the Applicants fail to appear before the lower Court, it will be open to the trial Court to pass appropriate orders, as may be permissible by law. Counsel for the Applicants submits that the Applicants are based at Delhi. In such situation, the Applicants be permitted to appear before the trial Court through their Counsel. If such

application is made, the trial Court may consider the same in accordance with law.

(A.M.KHANWILKAR,J.)